

STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
) Docket No. 08-AFC-5
Application for Certification)
For The Imperial Valley Solar)
Project (formerly known as SES)
Solar Two Project))
IMPERIAL VALLEY SOLAR, LLC)
-----)

BONDERSON BUILDING
HEARING ROOM 102
901 P STREET
SACRAMENTO, CALIFORNIA

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10:02 A.M.

JAMES F. PETERS CSR, RPR
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Lorraine White, adviser to Commissioner Anthony Eggert

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INTERVENOR: CURE

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INTERVENOR: BUDLONG

Tom Budlong(via teleconference)

Larry Silver, Esq.(via teleconference)

Edie Harmon(via teleconference)

APPEARANCES CONTINUED

ALSO PRESENT

Bridget Nash-Chrabascz (via teleconference)

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PROCEEDINGS

PRESIDING MEMBER BYRON: Good morning, everyone.

My name is Commissioner Jeff Byron and I'm the presiding member on the Imperial Valley Solar Project, formally Solar Two Project.

And I'd like to welcome you all to a status conference that we're having here at the Energy Commission at 10 o'clock here on the 21st of June.

I'm going to turn it over to our hearing officer in a moment to conduct this. But I just wanted to reiterate that what we're trying to accomplish here is based upon the evidentiary hearings that we conducted in El Centro I believe on May 24th and 25th. We were very interested in making sure we understand how all of the various moving parts for this project fit together so that we can come up with a cohesive schedule and make sure that there's sufficient time for review and analysis on the part of all the parties.

The Status Conference notice indicates that we're going to discuss the progress to date with the AFC process, with a particular emphasis on meeting the June 28th publication date for the supplemental staff analysis. And we're also interested in a discussion of the comments received on the staff analysis and the draft environmental impact statement and how that would be helpful to the

1 Committee in evaluating progress.

2 There's a lot of information that we'd like to
3 gather at this conference. And we're not going to argue
4 the points that have been made in some of the
5 recent briefs.

6 Let me do this. Let me introduce my adviser to
7 my right, Kristy Chew. And unfortunately because of
8 scheduling constraints, Commissioner Eggert could not join
9 us today. But his advisor, Lorraine White, is here.
10 Commissioner Eggert's covering a meeting that I was
11 supposed to be with him this morning.

12 And I think what I'd like to do, at this point,
13 is ask that we go ahead and introduce parties. And I'm
14 going to turn this over to our Hearing Officer, Mr. Raoul
15 Renaud.

16 HEARING OFFICER RENAUD: Okay. Thank you,
17 Commissioner Byron. Good morning, everyone.

18 This is a status conference which we called for
19 the purpose really of hearing from the parties how things
20 are progressing since the evidentiary hearings.

21 And before we do anything further, let's go ahead
22 with the introductions. We'll be hearing first from the
23 applicant.

24 Can you introduce the people you have here today
25 please.

1 MR. THOMPSON: Yes, good morning. My name is
2 Allan Thompson, one of the co-counsel on this project. To
3 my right is Sean Gallagher of Tessera. To his immediate
4 right is Ella Foley Gannon, who is co-counsel on this
5 case. And to her right is Bob Therkelsen, another
6 consultant working on this. In our audience to our rear
7 is Angela Leiba from URS Corporation.

8 HEARING OFFICER RENAUD: Thank you very much.
9 And from the staff please.

10 CEC PROJECT MANAGER MEYER: Christopher Meyer,
11 Project Manager for the Energy Commission on the project.
12 And Caryn Holmes is staff counsel on the project.

13 HEARING OFFICER RENAUD: Good morning to you
14 both.

15 And intervenor CURE please.

16 MS. MILES: Loulena Miles for CURE.

17 HEARING OFFICER RENAUD: Thank you very much.

18 And I see we also have in the room Jennifer
19 Jennings, our public advisor. Welcome.

20 This hearing is being stenographically
21 transcribed and there will be a transcript of this
22 published in the coming days.

23 We also have a telephone line open. And from the
24 beeps, I can tell we have a pretty large telephonic
25 audience.

1 Let me ask first if any of the formal intervenors
2 to the proceeding are on the phone line.

3 Mr. Budlong, are the there?

4 MR. BUDLONG: I am indeed. I am hear.

5 HEARING OFFICER RENAUD: All right. You can hear
6 us, I take it.

7 MR. BUDLONG: Yeah. There was a little stretch
8 here, I think with all the -- I was hearing all those
9 funny noises.

10 HEARING OFFICER RENAUD: All right. Thank you.
11 And let me ask all of you on the phone, when you
12 do speak to us, speak loudly right into your telephone,
13 because you're on a little speaker phone right in the
14 middle of a large room.

15 Let me ask also, is Mr. Beltran present?

16 No. Anyone from California Native Plants
17 society?

18 All right. Mr. Alimamaghani, are you present?

19 No.

20 All right. If there anybody else on the
21 telephone who would like to introduce themselves at this
22 point, please go ahead.

23 MR. SILVER: Yes, this is Larry Silver, the
24 counsel to Intervenor Budlong.

25 HEARING OFFICER RENAUD: Very good. Good

1 morning, Mr. Silver.

2 Anyone else?

3 MS. HARMON: This is Edie Harmon with --

4 HEARING OFFICER RENAUD: Could someone make sure
5 the volume's all the way up on that thing.

6 PRESIDING MEMBER BYRON: Careful, careful.

7 MS. NASH-CHRADESCZ: This is Bridget
8 Nash-Chrabascz with the Quechan Tribe.

9 HEARING OFFICER RENAUD: One moment please.

10 PRESIDING MEMBER BYRON: Just go back one.

11 HEARING OFFICER RENAUD: All right. Edie Harmon,
12 would you try it again please louder.

13 MS. HARMON: Edie Harmon. I'm with Mr. Tom
14 Budlong.

15 HEARING OFFICER RENAUD: Perfect. Thank you.

16 And then we heard from Larry Silver.

17 And then the next person, we didn't hear you.
18 Would you please start over.

19 MS. NASH-CHRADESCZ: I'm Bridget Nash-Chrabascz
20 with the Quechan Tribe.

21 HEARING OFFICER RENAUD: Very good. Thank you.
22 I recall you from the evidentiary hearing. Welcome.

23 Anyone else?

24 All right. That's fine. Let's go ahead then.

25 As I said, we called this Status Conference just

1 for the purpose of checking in, make sure you haven't
2 encountered any new obstacles; or if you have, to let us
3 know.

4 We're hoping first to see a supplemental staff
5 analysis on June 28th. I note you actually said June
6 27th, but I'm sure you didn't mean it. It's Sunday.

7 CEC PROJECT MANAGER MEYER: Yeah, that was just,
8 I guess, 30 days from the end of the comment period.

9 HEARING OFFICER RENAUD: Okay. Well, we've
10 granted you an additional day.

11 (Laughter.)

12 HEARING OFFICER RENAUD: Thank you.

13 All right. The applicant did file motions and
14 asked that the parties be required to file responsive
15 briefs by last Friday. The motions were filed last
16 Monday. The Committee declined to meet that request. We
17 don't think that's enough time.

18 We would ask though that any briefs you do wish
19 to file be filed by this coming Friday, June 25th.

20 The Committee will not be hearing oral argument
21 on those briefs. We will review the briefs and make any
22 response that we deem appropriate, including none.

23 Ms. Holmes.

24 STAFF COUNSEL HOLMES: Will staff be allowed to
25 brief those issues post-evidentiary hearing as is usual in

1 these cases?

2 HEARING OFFICER RENAUD: Absolutely.

3 STAFF COUNSEL HOLMES: Thank you.

4 HEARING OFFICER RENAUD: All of the legal and
5 factual issues will be open for briefing.

6 STAFF COUNSEL HOLMES: Thank you.

7 HEARING OFFICER RENAUD: So, with having said all
8 of that, I think maybe the way to proceed would be to ask
9 staff for just a brief status report. Anything new and
10 exciting? How's it coming on the SSA?

11 CEC PROJECT MANAGER MEYER: As you can imagine --

12 HEARING OFFICER RENAUD: Those of you who are on
13 the phone, if any of you have any trouble hearing, please
14 let us know. If you don't speak up, we'll assume you can
15 hear all right.

16 Those of you in the room, please keep your voices
17 as loud as you can, particularly if you don't have a
18 microphone.

19 MR. THOMPSON: No mute. When they mute, we get
20 the music sometimes.

21 HEARING OFFICER RENAUD: Yeah, don't -- and those
22 of you on the phone, by the way, don't -- please don't use
23 your mute buttons.

24 STAFF COUNSEL HOLMES: Don't put them on hold.

25 HEARING OFFICER RENAUD: Yeah, hold button.

1 Sorry, hold buttons, because sometimes that results in
2 we're having to listen to your music.

3 All right. Go ahead. Staff.

4 CEC PROJECT MANAGER MEYER: Just probably the
5 first thing, this is probably one of the most critical
6 days leading up to the publication. I've got about six
7 outstanding calls trying to get staff refocused or get
8 them responses that they need to get their analysis done.
9 So quickest would be wonderful today so I can get back to
10 that.

11 But there are some challenges on water
12 alternatives that we are working frantically through.
13 We're still scheduled to publish on Monday. And the only
14 recent hurdle which the applicant is working on is the
15 comment letter from Imperial Irrigation District and
16 trying to figure out how to address that. And the
17 applicant can probably fill us in with more details on
18 supply power to the facility and how that's being
19 addressed.

20 But that's where we are right now, is just trying
21 to pull everything together. And we have the next few
22 days to get consistency between all the sections that are
23 now coming in.

24 HEARING OFFICER RENAUD: That's a comment letter
25 that I believe just came in, didn't it, or a day or two

1 ago?

2 CEC PROJECT MANAGER MEYER: Yeah, last week I
3 think is when -- we received it about three weeks after
4 the comment period ended.

5 HEARING OFFICER RENAUD: Yes, I noticed that.

6 CEC PROJECT MANAGER MEYER: But we're still going
7 to be addressing it.

8 HEARING OFFICER RENAUD: All right. Very good.
9 Well, we'll try not to keep you here very long. That's
10 partly why we decided not to address these briefs today.
11 If we did that, we'd be here all day.

12 CEC PROJECT MANAGER MEYER: Thank you.

13 HEARING OFFICER RENAUD: All right. Well, let's
14 hear from the applicant. What have you -- and we do thank
15 you for the proposed schedule. We'll go over that
16 shortly.

17 Any statement from the applicant?

18 MR. THOMPSON: Yeah, let me keep this brief. We
19 believe that we have submitted everything that is required
20 for the analysis. We believe the other agencies that have
21 documents flowing into this process, to the best of our
22 knowledge, are on time as well.

23 We think that the record is -- should be complete
24 for staff to conduct its analysis.

25 With regard to the IID letter, that just did come

1 in. And I have seen numerous Emails between ourselves and
2 IID. We believe that we will have something shortly
3 addressing those issues.

4 We would hope that the IID issues are not --
5 they're the kind that do not rise to the level of
6 importance to cause any delay in what we're doing here.

7 What I'd like to do, if you get to the schedule
8 part of this, is ask Mr. Therkelsen to address those
9 issues. He has been closer to the schedule issues than
10 the rest of us.

11 HEARING OFFICER RENAUD: Can somebody give us a
12 one-minute summary of the IID issues. Since that keeps
13 coming up, I'm sort of wondering is there something in
14 there that -- my concern.

15 STAFF COUNSEL HOLMES: IID identified the
16 potential need for additional facilities and, not
17 surprisingly, recommended that the Energy Commission
18 include an analysis of the environmental effects
19 associated with the construction of those facilities.
20 These are facilities that potentially be needed to provide
21 electricity to the project. You're probably aware that
22 the project needs grid power to create hydrogen and needs
23 grid power in order for the facility to begin operating
24 each morning.

25 MR. GALLAGHER: The status of that is that we've

1 since talked to IID. There was a paragraph in that
2 comment letter that raised some eyebrows about additional
3 work that might have to be done. It turns out that the
4 connection to the IID system was described in the AFC. It
5 is discussed in the staff analysis. We've now talked to
6 the IID, and they've told us that the plan is to just
7 connect the service drop to the distribution line that
8 runs along the highway adjacent to the project site. So
9 it doesn't require any additional ground-disturbing
10 activities. And we're working on getting something in
11 writing for them to confirm that.

12 HEARING OFFICER RENAUD: All right. Sounds good.

13 MR. GALLAGHER: If I could just sort of add to
14 Mr. Thompson's sort of opening statement.

15 I think the key thing today is to set out the
16 schedule for the remainder of the case. And the reason we
17 filed the briefs last week was to try to illustrate why we
18 think that everything can move along on a reasonably
19 timely track.

20 We have tried to be realistic, and the schedule
21 that we distributed last week to you postpones the
22 Commission's adoption of a decision by a couple of weeks
23 compared to the prior schedule in recognition of the fact
24 that there's still some additional work that has to come
25 in and that we're going to need a final cleanup hearing

1 to -- or a final set of hearings to take in the
2 Commission's supplemental Staff Assessment, some of the
3 documents.

4 So we've tried to be realistic about how long
5 it's going to take. And I think what we're hoping to get
6 out of this is adoption of the final schedule and for some
7 clarity that -- you know, that -- from our perspective,
8 the record's adequate for the staff to complete their
9 supplemental Staff Assessment. We're very happy that it's
10 on track. And then just sort of set out the track for the
11 rest of the case.

12 The one thing I think we will have to address is
13 the cultural. And so I think that's not coming in on
14 Monday. And it's our -- I think it's going to be key for
15 this case that that come in on time to be addressed at the
16 final set of hearings. And so we'll want to get that
17 resolved today as well.

18 HEARING OFFICER RENAUD: All right. Thank you.

19 We are certainly interested in hearing input
20 today regarding the schedule. We aren't going to agree on
21 a schedule right now. The Committee will issue a revised
22 schedule after this hearing, very shortly after this
23 hearing. But we are very interested in hearing from
24 parties about their views on the schedule.

25 Let's go back to the cultural, focusing on that.

1 How's that coming? I know that's been a problem.

2 CEC PROJECT MANAGER MEYER: Right. Since the
3 original Staff Assessment draft EIS was highly reliant on
4 a Programmatic Agreement which we are no longer going to
5 be relying on, staff is stepping back and doing a full
6 CEQA-compliant analysis, which is why it's taking more
7 time, so we do not have, you know, any potential that
8 something that happens outside of our control would
9 potentially adversely impact the completeness of our
10 analysis on cultural resource.

11 PRESIDING MEMBER BYRON: Mr. Meyer, that's new,
12 right, since the evidentiary hearing, that you're not
13 relying upon the Programmatic Agreement?

14 CEC PROJECT MANAGER MEYER: Yes, that was -- we
15 were hoping on this project and -- well, for on the
16 Sterling projects too -- remain dependent on the
17 Programmatic Agreement. Subsequently the decision was
18 made by the Environmental Office writing the cultural that
19 they needed to go and independently complete the analysis
20 so that we didn't have any potential problems where if the
21 Programmatic Agreement in its final form wasn't complete
22 enough or if there are any potential problems, that we did
23 not have an issue that came up too late for us to resolve
24 it.

25 HEARING OFFICER RENAUD: Will you be able to make

1 use of the work that's already -- that was done for the SA
2 on cultural?

3 CEC PROJECT MANAGER MEYER: It was very -- yes,
4 we're going to be using that information and any
5 subsequent information that we've gotten since that point.
6 And I think we discussed it before. I'm not sure where it
7 was reflected. But we were talking about the -- instead
8 of the I believe the August 15th date that it had been
9 discussed at one point, that we would be filing the
10 cultural section to follow up on August 2nd. And that was
11 in numerous discussions with our Environmental Office.
12 That was as far up as I could push it, is that they were
13 willing to commit to. They understand the pressure, they
14 understand the urgency, and we'll be working to get that
15 out as fast as possible to meet that August 2nd date.

16 HEARING OFFICER RENAUD: And would that -- do you
17 anticipate that will include recommended conditions of
18 certification?

19 CEC PROJECT MANAGER MEYER: Yes, it will be
20 complete with conditions of certification as a normal
21 Energy Commission-only process.

22 HEARING OFFICER RENAUD: Okay.

23 MR. GALLAGHER: We have some concerns about that
24 timing. And let me explain them.

25 In order for the Commission to stay on a track

1 that's parallel to the BLM, Commission's decision should
2 come out around the middle of September. And that's the
3 day we proposed in the schedule that's in front of you.

4 And in order to meet that schedule, we suggested
5 that final hearing be held approximately the 26th of July.
6 And we further suggested that the cultural report should
7 be filed -- that the -- or the SSA should be filed around
8 the 12th of July so the parties can address it for the
9 July 26th hearing.

10 The reason we think that staff ought to be able
11 to make that date is that they have had the class
12 technical report since December; they will I think have
13 the BLM's admin draft final environmental impact statement
14 this week, if you don't have it already, which will
15 include a full analysis of cultural, we're told; the PA is
16 near final and, you know, it can also be used for the
17 staff's analysis. And of course we've suggested in -- I
18 think everyone agreed that the mitigation in the draft --
19 in the SA draft EIS needed some work. And we've suggested
20 a revised Cultural 1 mitigation condition that would be
21 adequate. So we think there's enough to go on.

22 And I don't know if we -- I don't know what the
23 rationale is for the change in approach by staff, and
24 we can -- and if you'd like, you can ask them. But I
25 think it's disconcerting to hear that the change in

1 approach may lead to a delay in this case that
2 doesn't -- that may not be necessary.

3 PRESIDING MEMBER BYRON: Mr. Meyer, what extent
4 can you address that? I mean, I was hoping that you'd
5 gone in this direction to not rely upon a Programmatic
6 Agreement because it would either speed schedule because
7 you're not relying upon the input of others to complete
8 your analysis or that -- you know, that you don't need the
9 information that it contains.

10 Can you give me some sense of why you've made
11 this change since the evidentiary hearing?

12 CEC PROJECT MANAGER MEYER: Partly in response to
13 comments received from, amongst others, the applicant on
14 how our cultural section, the conditions were written.
15 The concerns were brought up not, you know, just by
16 parties but by the applicant as well on the defensibility
17 of the document and the conclusions therein.

18 So when staff looked at those, they made the --
19 the cultural resource experts, they made the determination
20 that they needed to go to something that they could write
21 without reliance on the Programmatic Agreement. And it
22 was first to speed things up and the fear that in going
23 back and forth between the two agencies trying to find
24 something that sort of worked with everyone with the way
25 that the draft Programmatic Agreement was stated now,

1 trying to come up with something completely new, there was
2 concerns that that would take longer than anticipated.

3 So going with the traditional Staff Assessment
4 format that we would have in a normal Energy Commission
5 document is something we knew we could get in time, you
6 know, which was the August 2nd date. That was one of the
7 big focuses on it.

8 And the other big one is defensibility. There is
9 a question on the Programmatic Agreement of, you know, not
10 worrying about it meeting the NEPA standards, but more
11 concerns of would it also meet CEQA standards. And by
12 going this approach, staff is comfortable that it will be
13 a CEQA-compliant document. Which we believed would be
14 under the prior approach, but we didn't have enough of a
15 level of certainty, and we did not, as I say, want to get
16 so far into the process and then find out that we had a
17 fatal flaw.

18 HEARING OFFICER RENAUD: One thing I think I can
19 safely say on behalf of the Committee is that as these
20 supplements come out, that the parties give a great deal
21 of consideration and put effort into trying to come to
22 agreement on them. Because if you can do that, we can
23 keep the evidentiary hearing down to a fairly short
24 process.

25 Staff, you know, is very experienced I think in

1 drafting analyses that are understandable to the public
2 and that the parties can digest quickly, and that it has a
3 potential at least for the parties to be able to come to
4 agreement on.

5 So that's one place I see kind of a ray of hope
6 here for being able to stay on track for the September
7 final decision.

8 MR. GALLAGHER: And I would suspect that
9 substantively we will be very close to agreement. Of
10 course we'll have to see it before we can be certain.

11 I would note also that the Commission held I
12 guess just about two weeks now -- two weeks ago now a
13 hearing on cultural issues sort of more broadly. And this
14 was one of the dockets that we considered it. So I
15 believe the record taken at that hearing becomes a part of
16 the record in this case.

17 We did submit a brief I believe in that -- for
18 that hearing, as I say, I believe it's part of the record,
19 that sort of laid out how the Commission can move forward
20 based on BLM's work, because this is -- there's specific
21 statutes that cover cultural resource issues that are more
22 specific and more direct than -- and apply more sort of
23 closely to the cultural resources used in the sort of
24 traditional NEPA-CEQA dichotomy. And so the Commission
25 really can utilize the BLM's mitigation and rely on the

1 BLM's proposed mitigation for its decision in this case.
2 And that may be another way to ensure that we are able to
3 stay on track.

4 I think, you know, arguably you've got analysis
5 in the SA that's adequate that can be -- can be relied on,
6 and supplemented with the mitigation measures complied by
7 BLM - and, Bob, help me out if I'm steering anybody wrong
8 here - that would be adequate for a document.

9 I mean I guess we would hope it wouldn't get this
10 far. But if the staff's unable to file something that's
11 timely, that is a way for the Commission to proceed and
12 issue this decision in a timely manner.

13 HEARING OFFICER RENAUD: The Committee really
14 isn't in a position to order staff to do anything, you
15 know. We aren't going to tell staff, "You have to do it
16 faster." I don't think that's really -- we have to accept
17 it on good faith, Mr. Meyer telling us as project manager
18 that this is what we can accomplish. What we need to do
19 is look for ways to make all that work.

20 I'm thinking -- and, again, this is just talking,
21 we're not deciding when the schedule or issuing a schedule
22 and order here -- that we know we're going to have another
23 evidentiary hearing session, that this proposed schedule
24 calls for late July, which would work well with the June
25 28th supplemental. Except the cultural won't be there.

1 We might need yet one more evidentiary hearing session
2 just to cover the cultural. And I think we're just going
3 to have to face that when we come to it.

4 But I would suggest that people start looking at
5 late July, early August as the next evidentiary hearing
6 session. And if anybody has firm vacation plans around
7 that time period, probably ought to speak up now so we'll
8 look for dates.

9 I see Ms. Holmes.

10 STAFF COUNSEL HOLMES: Not me, unfortunately. I
11 wish it were me.

12 MR. BUDLONG: This is Tom Budlong. I do have
13 plans in that period. I'm going down to Peru.

14 HEARING OFFICER RENAUD: All right. Would you be
15 able to phone in from Peru for the hearing?

16 MR. BUDLONG: I don't think so.

17 (Laughter.)

18 HEARING OFFICER RENAUD: All right. Do you have
19 firm dates, Mr. Budlong, when you're going to be gone?

20 MR. BUDLONG: Yeah, I'm looking at my calendar
21 here. It looks like I leave on July 28th and I return on
22 August 10th.

23 HEARING OFFICER RENAUD: All right. Well, we'll
24 take that into account. I can't guaranty that we're going
25 to be able to accommodate everyone. But thank you for

1 that input at least.

2 MR. BUDLONG: And A lot of that is walking the
3 Inca Trail. And I don't think they have phone lines down
4 there.

5 HEARING OFFICER RENAUD: All right.

6 PRESIDING MEMBER BYRON: Before getting down into
7 this level of detail with regard to schedule, let's go
8 back to some of the key issues, the line of questioning
9 that you were taking us down earlier, Mr. Renaud.

10 I'm curious, a question to the staff, do you have
11 all the data that you need to do the analysis that you've
12 indicated, sort of a staff analysis?

13 What do we call it?

14 HEARING OFFICER RENAUD: Supplemental.

15 PRESIDING MEMBER BYRON: Supplemental Staff
16 Assessment for cultural resources?

17 CEC PROJECT MANAGER MEYER: I'm trying to track
18 down the last piece to find out if we have it, because the
19 applicant alluded to the separate case, I think 10-CRD-1,
20 that's in reference to the --

21 HEARING OFFICER RENAUD: -- the data, yes.

22 CEC PROJECT MANAGER MEYER: -- the data -- staff
23 used data from the BLM. I'm not sure if we have
24 everything that's the same that the BLM is basing their
25 final environmental impact statement on. But I do believe

1 staff has enough information to do a complete analysis,
2 and that any changes that we would talk -- we would
3 discuss in the evidentiary hearings would be minor.

4 STAFF COUNSEL HOLMES: We also need the IID
5 confirmation that there are going to be no additional
6 facilities needed in order to --

7 PRESIDING MEMBER BYRON: What was that last
8 acronym?

9 HEARING OFFICER RENAUD: IID.

10 CEC PROJECT MANAGER MEYER: That's Interior
11 Irrigation District.

12 HEARING OFFICER RENAUD: Yeah, I think we heard
13 from applicant that that -- they're in the process of
14 getting that confirmation.

15 STAFF COUNSEL HOLMES: But I wanted to emphasize
16 that it is an important piece of information.

17 HEARING OFFICER RENAUD: Absolutely. We
18 understand.

19 Let's hear from CURE if you have anything to add
20 to the discussion at this point.

21 MS. MILES: Well, I would like to add that I
22 attended a meeting with the BLM last week regarding
23 cultural resources for this project. It was a
24 consultation meeting. And we discussed the Programmatic
25 Agreement. And a number of tribal members were present

1 and expressed concerns about traditional cultural
2 properties. And now that the BLM-Energy Commission
3 processes seem to be diverging, I'm wondering how the
4 Energy Commission will be capturing information in terms
5 of impact identification and significant analysis
6 establishing what is the significance of the impact and
7 the significance of the resources, since I have noticed
8 that the Energy Commission staff has not been attending
9 the consultation meetings.

10 So in terms of gathering information, is that
11 something that staff is doing independently with the
12 tribes? Because -- and my understanding in the Genesis
13 proceeding - my colleague from CURE is working on that
14 proceeding - that in the Staff Assessment, it said that
15 the Energy Commission needed to get information from the
16 tribes to determine traditional cultural properties and
17 significance of impacts.

18 CEC PROJECT MANAGER MEYER: I can respond to
19 that.

20 We received requests early on and continually
21 from the BLM that allow them to be the sole point of
22 contact with the Native American tribes. Our staff has
23 been involved in several of those meetings. But in this
24 last one our staff was not available to attend.

25 But we're going to be working when we're not

1 attending those with the BLM. We'll be working with --
2 between our staff and BLM's staff to address traditional
3 cultural properties.

4 So, you know, we are aware of the need for that
5 information. And when our staff is available, they will
6 be speaking with the BLM cultural resource specialists on
7 the meeting on traditional culture properties.

8 HEARING OFFICER RENAUD: Good. Thank you.

9 MS. MILES: And also I had a couple of other
10 questions, one relating to the biological opinion and the
11 status of that. In particular, I know that there were
12 some questions about impacts to peninsular bighorn sheep.
13 And I'm wondering if I could get an update from, I'm not
14 sure, the applicant or the staff regarding what the status
15 of the Fish and Wildlife Service, you know, evaluation of
16 that is.

17 STAFF COUNSEL HOLMES: Staff doesn't know.

18 HEARING OFFICER RENAUD: Biological opinion.

19 MS. GANNON: They are considering those impacts
20 as part of the Section 7 consultation, and it will be
21 addressed in a formal biological opinion, which will be
22 issued.

23 HEARING OFFICER RENAUD: Do you know when?

24 MS. GANNON: It is scheduled for July 12th.

25 HEARING OFFICER RENAUD: All right.

1 MS. MILES: And then my last question is
2 regarding mitigation proposal for flat tail horned
3 lizard -- impact to flat tail horned lizard. And I know
4 that at the Staff Assessment workshop quite awhile back,
5 there were many questions unresolved about that mitigation
6 proposal. And I was wondering -- staff had said that they
7 were going to be in contact with BLM. And I wondering if
8 I could get an update from staff about any discussions
9 that have occurred and where that's going with the
10 mitigation proposal.

11 Have you resolved that issue?

12 STAFF COUNSEL HOLMES: Yeah, staff has been in
13 consultation both with BLM and U.S. Fish & Wildlife
14 Service. And there will be mitigation identified in the
15 Condition of Certification and the Staff Assessment that
16 comes out on Monday.

17 MS. MILES: Okay.

18 HEARING OFFICER RENAUD: Good. Thank you.

19 All right. Any intervenors on the phone wish to
20 comment at this point on what we've been talking about so
21 far? We heard from -- Mr. Budlong, I know you're there,
22 and Mr. Silver, I know you're there.

23 Bridget Nash, do you wish to say anything at this
24 point particularly on cultural?

25 MS. NASH-CHRAVASCZ: I'll do the best I can.

1 I've kind of lost my voice. So I hope you guys can hear
2 me okay.

3 HEARING OFFICER RENAUD: Just fine. Thank you.

4 MS. NASH-CHLABASCZ: Okay. Well, there was a
5 meeting last week with BLM and there were several tribes
6 that were there. Numerous tribal representatives stood up
7 and they, you know, aired their concerns about the project
8 and the fact that the tribal community -- the resources
9 that are there belong to the tribes. And nobody has
10 really come out and spoken with the tribes.

11 Numerous tribes, including our own, mentioned the
12 fact that consultations so far has been, you know, BLM
13 sending out a letter or an Email with the tribes
14 requesting information. And so far we still haven't been
15 given that information. The Cultural Board has still been
16 delayed.

17 The PLE may come out in draft form in July, as I
18 understand it. But it's no where near final. And it's
19 continuing to be worked. Many of the tribes said that
20 they have concerns about it. Some tribes have said that
21 they won't sign it.

22 There are a lot of cultural concerns out there.
23 And I keep hearing, you know, "Well, we need to rush it.
24 We need to get this done," you know. "How dare staff
25 delay this until August 2nd to try and really go through

1 this information." But there's a lot information
2 involved. And I really hope that everyone does take a
3 step back and really look at the impacts. Because it's
4 not just within this project area. It's the entire
5 cultural landscape, with all of the projects that are
6 proposed on adjacent BLM lands as well as adjacent private
7 lands in Imperial County.

8 That entire landscape there, it does tell a
9 story. There are some religious connections there as
10 well. I mean it just really needs to be understood. And
11 without going to the tribes and really sitting down and
12 talking with the tribes, it's really not going to be
13 understood.

14 And I think now there are several tribes that are
15 wanting to be heard. But at this stage, at least I can
16 say with BLM, is that the biggest complaint now is that,
17 while the tribes go to the meetings and they say things,
18 but nobody's really listening. They're being heard, but
19 nobody's really listening to what's being said.

20 So, you know, I personally would like to thank
21 the staff for saying, "You know what, we need more time,"
22 because there's a lot going on. And I would just like to
23 encourage staff to really reach out to the tribes and
24 maybe sit down one on one with the tribes, because a lot
25 of the tribes aren't going to participate in this manner

1 like I am now. They'd rather sit down one on one and have
2 these conversations.

3 So --

4 HEARING OFFICER RENAUD: Well, thank you. We
5 appreciate that input.

6 MS. NASH-CHRAVASCZ: -- I hope that adds --

7 HEARING OFFICER RENAUD: And I'm sure that the
8 staff is doing everything that it can and will do
9 everything it can to make sure that there's full
10 inclusiveness of all affected parties.

11 What other business should we consider taking
12 care of here this morning?

13 One moment please. Off the record.

14 (Thereupon a discussion occurred off the record.)

15 HEARING OFFICER RENAUD: Okay. We're back on the
16 record.

17 Focusing on staff again. You've I think seen for
18 the first time this morning a proposed schedule from
19 applicant. It calls for a publication of the PMPD on
20 August 9th, which doesn't really -- wouldn't really be
21 feasible if the cultural section isn't out until August
22 2nd.

23 Any comments, thoughts about that proposed
24 schedule from you? I think that the minimum that we --
25 you know, if August 2nd is the cultural section, we could

1 hold evidentiary hearing two weeks after that. We'd have
2 to have an evidentiary hearing before we can publish a
3 PMPD. That would get us into, you know, the latter part
4 of August for the PMPD.

5 I could see getting still getting to a final
6 decision hearing at the end of September. I mean that's,
7 you know -- but let me hear if you have any thoughts or
8 comments. Or if you don't, that's okay.

9 MR. THERKELSEN: Mr. Hearing Officer, perhaps it
10 would be useful for me to explain how I pulled this
11 together sort of as a background.

12 HEARING OFFICER RENAUD: I understand.

13 Let's hear from staff first.

14 MR. THERKELSEN: Okay.

15 STAFF COUNSEL HOLMES: I have -- staff has two
16 comments on what we, as you correctly identified, have
17 seen for the first time this morning.

18 First of all, I think we would prefer to go
19 forward with the hearings on all things but cultural in
20 July. I don't recommend waiting until August to hear the
21 remainder of the items.

22 I do think that there will need to be a
23 subsequent hearing for cultural in July. This would be
24 similar to the schedule that's been proposed for the
25 Calico project, where there will be hearings on all issues

1 except for cultural, and then two weeks later a morning or
2 so devoted to cultural.

3 The second point that I have to make is that I am
4 concerned that one day is not sufficient for these
5 hearings, given the fact that staff has not put on its
6 case yet on the contested topics of soil and water and
7 biological resources.

8 HEARING OFFICER RENAUD: All right. Thank you
9 for that. And we'll certainly look for -- to schedule
10 this in such a way that there could be a second day, if
11 needed.

12 STAFF COUNSEL HOLMES: And when you are ready to
13 hear about constraints on schedule, I would happy to talk
14 to you about that.

15 HEARING OFFICER RENAUD: All right. I think --
16 you're talking about personal plans?

17 STAFF COUNSEL HOLMES: I'm talking about the --
18 both members of the biological resources team have
19 vacations planned in this general timeframe. And I think
20 it would be important for the Committee to know. And that
21 is so that we could have witnesses at the hearing.

22 HEARING OFFICER RENAUD: Yeah, witnesses can be a
23 problem too.

24 STAFF COUNSEL HOLMES: It's a good thing.

25 HEARING OFFICER RENAUD: As you can see, going

1 in -- as Commissioner Byron pointed out to me, it's pretty
2 much impossible to accommodate everybody's schedule.

3 STAFF COUNSEL HOLMES: Well, staff --

4 HEARING OFFICER RENAUD: But if there are
5 critical, you know, people that you can't go without, you
6 know, we do have to look at that.

7 STAFF COUNSEL HOLMES: Well, staff's biological
8 resources experts are not available the 28th and the 29th
9 nor the first week of August. So the 26th and the 27th
10 they are available.

11 HEARING OFFICER RENAUD: All right. Well, we're
12 kind of thinking that this -- those two dates might be the
13 ones. Even Mr. Budlong will still not yet be in for
14 the...

15 All right. Mr. Therkelsen, why don't you give us
16 a very brief rundown of your thoughts here.

17 MR. THERKELSEN: Very brief rundown. One of the
18 things that the Commissioner asked for were the moving
19 parts. And I'd like to point out some of the critical
20 moving parts.

21 Line number 22 is the LEDPA. Our expectation is
22 that the Corps will release their LEDPA the first part of
23 July. July 9th is their target.

24 Second is the biological opinion on line number
25 23. And the Fish and Wildlife Service's date for the

1 biological opinion is July 12th.

2 And then the third moving part, as we've been
3 talking about, is the PA. And on line number 33, August
4 2nd is the date that BLM is scheduled on their schedule to
5 sign the PA, with the signatories -- other signatories
6 coming in by August 15th.

7 So the date in terms of the draft and the final
8 PA is a little squishy. I've got down there on line
9 number -- for example, on number 19, June 21 is the date
10 for the final cultural PA. We know that is going to be
11 late because they're accepting comments on the draft until
12 June 26th. But -- what did I say?

13 MS. GANNON: 24th.

14 MR. THERKELSEN: June 24th is when they're
15 accepting comments. So the final wouldn't come out on
16 June 21st. If not, some date after that, and it will be
17 the first part of July.

18 The other thing I think that is very critical to
19 notice is the date of publication of the final
20 environmental impact statement. That's line 26. BLM's
21 schedule is July 16th. And everything we understand,
22 they're very firm and committed to that date.

23 So all of those pieces will be in place before
24 the evidentiary hearings if the Commission holds it on the
25 26th. The 26th is a Monday And, yes, Caryn, I suspect

1 the possibility that being two days for that hearing. So
2 the 26th and 27th.

3 The critical thing, BLM right now is shooting for
4 a mid-September decision date. Line number 47, I show a
5 9/24. That's kind of their worst case. The expectation
6 is it will come out a week before that. But I wanted to
7 put sort of their worst case in there for you to see.
8 Their target is the 15th. And in terms of constructing
9 the schedule, I was looking at the opportunity for both
10 the BLM and the CEC decisions to come out at essentially
11 the same period of time.

12 The cultural is very problematic on this schedule
13 because of when it comes out. And one of the issues -- I
14 think there's three things to think about. First of all,
15 there is an abundance of information on cultural in the
16 record. And, secondly, the cultural resource is on BLM
17 land, and BLM is the expert. They're the ones that are
18 going to decide the mitigation. Staff can recommend
19 things, but the BLM ultimately is going to make the
20 decision.

21 And BLM has assured us -- and it sounds like this
22 is not occurring -- but assured us that they will be
23 sharing draft -- administrative draft of the FEIS with the
24 staff. We are aware -- the U.S. Army Corps of Engineers
25 said they received a draft of the cultural FEIS section.

1 So the staff expectation would be that staff
2 would have that as well and would be looking very closely
3 at that as sort of the moving document, reviewing it to
4 make sure that it's something that they can stand on. And
5 then they could, based upon their review again, accept
6 that as their document. That has happened in other cases,
7 the geyser referral cases. Most of those projects are
8 located on BLM land. And years ago when we did joint
9 environmental analysis with the BLM, the Energy Commission
10 staff, if you will, relied on an analysis done by the BLM,
11 reviewed it, accepted it as their own, and incorporated it
12 into the record.

13 They didn't have to do an entire independent
14 analysis. And I would suggest that is something that
15 could be done in this case.

16 MS. MILES: I'd like to just add something
17 briefly about the BLM's mitigation proposal and their
18 analysis regarding cultural resources.

19 The initial draft's Programmatic Agreement that
20 came out referenced the Staff Assessment draft EIS as the
21 document that would have the mitigation plan. Of course
22 the Staff Assessment pointed to the Programmatic Agreement
23 as the document that would have. But let me provide just
24 a couple more quick details.

25 And since that first PA came out, many agencies

1 commented -- or the Advisory Council for -- the Advisory
2 Council for Historic Preservation as well as the National
3 Trust commented that they needed to lay out mitigation.
4 And so the Programmatic Agreement has gone from, I don't
5 remember, under 50 pages to over a hundred pages now. And
6 still there's no mitigation plan in that Programmatic
7 Agreement. It has a blank page where there's a historic
8 properties treatment plan. And so I don't think that it
9 would be wise for the Energy Commission to rely on that
10 document as the mitigation proposal, because it's not far
11 enough along.

12 MR. THERKELSEN: I think in part I think staff
13 was correct. We did indicate concerns over the
14 defensibility of the mitigation in the Staff's Assessment.
15 We also proposed language that could take care of that
16 particular issue. Again, I haven't seen the
17 administrative draft that BLM has done. But they may have
18 mitigation in there. And the staff indicated earlier on
19 their workshops they were going to prepare criteria
20 guidelines or whatever would be related to mitigation.

21 And so, you know, we are, I am, very concerned
22 about that late date in delaying the entire case.

23 HEARING OFFICER RENAUD: Right. Well, let me ask
24 you a question.

25 You've got the final decision from the CEC on

1 September 15th here.

2 MR. THERKELSEN: That's correct.

3 HEARING OFFICER RENAUD: Suppose we made that
4 September 29th? If we got two weeks in there, it will
5 still be before the end of September.

6 MR. GALLAGHER: You know, I think we'd have to go
7 back and review that before we could tell you whether
8 that's something that we would be happy with. I mean I
9 think from our perspective there's a way to get to the end
10 line here by the middle of September, and that would be
11 our preference that the Commission take up. I'd be happy
12 to try to get you a, you know, more formal response on
13 September 29th.

14 You know, I think the other concern we have
15 though is that -- and we sort of know what's in the
16 SA/DEIS and we have an understanding of what's going in
17 PA. I think substantively we have some concern about the
18 Commission doing a separate cultural analysis than the
19 BLM, and those analyses coming to different conclusions or
20 suggesting mitigation, or staff suggesting some mitigation
21 that BLM is not going to impose. And recall that BLM's
22 land would be on, I think -- if I understand this
23 correctly, will ultimately, you know, make the decision on
24 what mitigation is actually done for these resources.

25 So we're a little concerned that something may

1 come out that throws a wrench not just into the schedule
2 but substantively. I'm not sure how we address that. But
3 I think there's a path that Bob has laid out, in fact we
4 had it in our briefs in the CRD case, give you an
5 approach.

6 HEARING OFFICER RENAUD: All right. Thank you.

7 I throw out the September 29th date because
8 that's the date we've widely around here viewed as the
9 final date for our cases. And there's a business meeting
10 on that date.

11 You know, I personally don't see why that
12 wouldn't work here. But if you have or can come up with
13 some information that would lead the Committee to believe
14 otherwise, that would be helpful. That's an extra two
15 weeks, that's a critical two weeks that could make the
16 difference here.

17 MR. GALLAGHER: Right. I guess I'd want to get
18 some clarity on that there being a way to actually get to
19 September 29th. Maybe that's something that we should
20 talk about provisionally here, because I'd hate to see us
21 say, okay, September 29th, but then we'd work our way
22 backwards and find that doesn't work either.

23 HEARING OFFICER RENAUD: Well, if the August
24 2nd -- if cultural is August 2nd - and that's kind of the
25 latest date -- I mean it sounds like there's a glimmer of

1 hope that it might be sooner, but let's not count on that.
2 Let's say August 2nd, minimal --

3 PRESIDING MEMBER BYRON: Just so I'm clear, what
4 is August 2nd? Because it's not on this proposed
5 schedule.

6 HEARING OFFICER RENAUD: That would be the
7 cultural -- release of the cultural staff analysis.

8 MR. THERKELSEN: That would be line number 25,
9 instead of the 7/12 date that we were thinking would be
10 feasible, it would be moved down to August 2nd.

11 HEARING OFFICER RENAUD: August 2nd. So 14 days
12 at the minimum time after that date we could hold
13 evidentiary hearing. So that's -- now we're in
14 mid-August.

15 We could probably -- yeah, I'm sure we could get
16 a PMPD done by the end of August. And then we'd have 30
17 days, get us to the end of September. So I can see that
18 working.

19 PRESIDING MEMBER BYRON: And would there need to
20 be an additional evidentiary hearing date for the cultural
21 resources?

22 HEARING OFFICER RENAUD: There would, and it
23 would need to be mid-August. We have to wait 14 days. So
24 it would be 14 days before we could do that.

25 But mid-August, any time after the 16th would

1 work. And publish a PMPD, then in 30 days minimum to a
2 decision.

3 So I can see that working, yeah. We've got extra
4 resources available to help publish PMPDs quickly. So,
5 yeah, I can see that happening.

6 PRESIDING MEMBER BYRON: And I'm glad you have
7 such clarity around this, Mr. Renaud.

8 So with regard to an evidentiary hearing to cover
9 what we would anticipate would be the remaining item
10 around cultural resources, would we issue a revised PMPD?

11 HEARING OFFICER RENAUD: That would -- well,
12 there would have to be a -- we would have an evidentiary
13 hearing that would just cover the topic of cultural
14 resources. At the conclusion of that hearing, we would
15 have held evidentiary hearings on all topics. That would
16 trigger the ability to publish a PMPD. What we would call
17 it, I'm not sure. But it would be the Presiding Member's
18 proposed decision. Since there hasn't been one before,
19 you know, I don't think we'd be concerned about revisions
20 to it at that point.

21 Then it's open for comment. And based on what we
22 get, we would determine whether there would be an errata
23 to it or whether more substantial changes would be needed.
24 That's a problem we'll face when we come to it.

25 MR. THERKELSEN: Mr. Hearing Officer, then if I'm

1 interpreting that right -- I'm throwing a hypothetical --

2 HEARING OFFICER RENAUD: Yes, good.

3 MR. THERKELSEN: If 8/2 is the staff's analysis,
4 and, say, the evidentiary hearing on 8/16, then
5 hypothetically you could come out perhaps with PMPD on
6 8/20.

7 HEARING OFFICER RENAUD: Yes.

8 MR. THERKELSEN: And a 30-day review would be
9 done on 9/19. And that would allow a decision then, you
10 know, the week after or ten days after at your 9/29 date
11 at the latest.

12 I'm assuming then that there either would be no
13 briefings on cultural or briefings would be due a couple
14 of days after that hearing and that would be it.

15 HEARING OFFICER RENAUD: That's right. We'd have
16 to -- if we were going to have briefings, they would be
17 expedited.

18 MR. THERKELSEN: Okay. I know that you can't
19 order staff -- or you said you could not order staff to do
20 anything earlier on cultural. Is there any way that you
21 can request them to look at something maybe even a couple
22 of days earlier?

23 HEARING OFFICER RENAUD: Well, I know staff --
24 staff is aware of everybody's interests in proceeding with
25 this as expeditiously as possible. But staff's an

1 independent party here. And I have every confidence that
2 staff is doing everything they can.

3 MR. THERKELSEN: But I would also wonder if staff
4 is looking at the approach of looking at the FEIS, the
5 cultural analysis being done by BLM, and looking at that
6 independently to see if they can accept that as their
7 approach after they've done their verification --

8 HEARING OFFICER RENAUD: That would be up July
9 16th -- right, July 16th.

10 MR. THERKELSEN: Right.

11 MR. GALLAGHER: But they should have the admin
12 draft this week.

13 HEARING OFFICER RENAUD: All right. Well, Mr.
14 Meyer, are you planning to look at the admin draft of
15 this --

16 CEC PROJECT MANAGER MEYER: As soon as I get it.
17 I've been talking with BLM. I haven't seen it yet. But I
18 will I find out why I haven't seen it yet.

19 HEARING OFFICER RENAUD: Yeah, that's -- and I'm
20 sure to the extent you can make use of it, you will,
21 right?

22 CEC PROJECT MANAGER MEYER: Yes.

23 HEARING OFFICER RENAUD: Okay.

24 MR. THERKELSEN: You're more confident than I am.

25 (Laughter.)

1 HEARING OFFICER RENAUD: We have to -- we have to
2 trust one another and assume everybody's working as best
3 they can in good faith. And that's the only way to do
4 this.

5 MS. GANNON: We'd like to reiterate though I
6 think with regards to the mitigation, if -- as we put in
7 our briefs in the consolidated hearing, again think about
8 what's feasible in terms of mitigation with recognition
9 that the staff is on BLM land. It's federal land and
10 federal resource.

11 So that, you know, we would encourage them to
12 also consider, you know, a can and a should approach and
13 criteria as we had suggested in our comments. Because we
14 do have a real concern about getting mitigation measures
15 assigned to us that we cannot carry out. If we are
16 ordered to do something on BLM land that BLM says no, we
17 can't do it. So to the extent that that can be taken into
18 consideration, we're very -- we're very concerned about
19 that.

20 HEARING OFFICER RENAUD: Well, if there's any
21 opportunity perhaps before August 2nd to hold some kind of
22 workshop or other forum regarding mitigation on cultural,
23 you know, that might be helpful --

24 CEC PROJECT MANAGER MEYER: Yeah.

25 HEARING OFFICER RENAUD: -- to head those

1 problems --

2 STAFF COUNSEL HOLMES: I'll just point out that
3 this isn't -- because we are proceeding in response to
4 requests from the applicant for a Staff Assessment now
5 before we have the LEDPA and before we have the biological
6 opinion and before we have the administrative draft, we do
7 run the risk of staff recommending conditions of
8 certification that may be different than what BLM
9 recommends in a number of areas. It's not just cultural
10 resources. We've taken this approach at their request,
11 we're proceeding with it. And we presume that if there
12 are conflicts or different types of approaches, the
13 Committee will have to deal with it through the hearing
14 process.

15 HEARING OFFICER RENAUD: Well, and I'm glad that
16 you brought that up.

17 Well, go ahead. I'd just like to voice --

18 MS. GANNON: I was just going to say, the one
19 thing is cultural resources are different in several ways
20 about the way the trade is under the law, because -- for
21 example, mitigation to impacts to waters of the U.S. If
22 staff says something different, then, you know, we can
23 bring that up and -- but there's always a possibility we
24 could meet both if that's what's required, if the Corps
25 required one ratio and the staff recommends something

1 different, you know, that's not conflicting. The problem
2 with cultural resources is that it's on federal land, it
3 is a federal resource that we can't -- if the mitigation
4 is generally related to what you're doing on the ground
5 mostly with regards to cultural resources. So they order
6 us to do something that we can't do. Let's say with data
7 recovery, a normal mitigation measure. If the BLM says
8 you can't do data recovery with this source on our land,
9 we can't do it.

10 So that's why I'm raising these specifically
11 cultural resources as a different issue than some of these
12 others.

13 In the other areas, you're right, there may be
14 things that we need to talk about at the hearings.

15 CEC PROJECT MANAGER MEYER: If you want me to --
16 just very briefly,

17 HEARING OFFICER RENAUD: Sure. Please.

18 CEC PROJECT MANAGER MEYER: This issue has been
19 brought up, you know, with our management. It's gone
20 right up to our deputy director, who's spoken with his
21 counterpart at the BLM. And my understanding, at this
22 point the BLM understands that there might be differences
23 and expressed that there'll be differences in his --
24 talked about the willingness to support the Energy
25 Commission's mitigation in these -- in cultural resources

1 specifically.

2 But at that point, I might just have the
3 assurances from my deputy director that this issue has
4 been discussed with the BLM. And if the BLM has comments
5 that they raise on what staff puts in their supplemental
6 Staff Assessment, as Caryn mentioned, we would look to the
7 Committee addressing that in the hearings, because the BLM
8 will have a chance to make comments, you know, before our
9 final decision.

10 HEARING OFFICER RENAUD: And we will certainly
11 look forward to those comments too.

12 All right. Appreciate all this input you're
13 giving us. And it really does sound like a lot of the
14 concerns that applicant is raising, the staff is aware of
15 and is doing what it can to head those off.

16 PRESIDING MEMBER BYRON: I just want to make sure
17 that I understand a couple of things here.

18 First of all, if I could, on the part of the
19 applicant, is it clear in your mind that we could have
20 conflicting conditions from both the BLM and the PMPD.
21 And I'll let you respond other than just a nod of the
22 head.

23 MS. GANNON: Because we haven't seen the
24 conditions particularly with regard to -- I mean what
25 we're very concerned about is cultural resources, because

1 we're hearing, really for the first time today as clearly
2 as it's been set out, that there's a whole new analysis
3 being undertaken and a whole new -- potentially new
4 mitigation approach that we have not seen.

5 The other areas, you know, as set out in the
6 Staff Assessment, we're assuming that those mitigation
7 approaches are probably not going to be changing in any
8 dramatic form.

9 So we are less concerned about the other
10 resources that the cultural resources -- I mean if it's
11 going to be conflicting, we have no idea, because we
12 haven't seen anything. We really substantively just are
13 at a loss.

14 PRESIDING MEMBER BYRON: There's not going to be
15 a lot of time for you to see them and for you to come back
16 to this Committee and determine whether or not you're
17 going to comply with them. I'm thinking that we're likely
18 going to ask you to -- I may not say this correctly. But
19 the more restrictive conditions are the ones that will
20 likely apply.

21 And so I'm turning to the applicant at this point
22 and asking you, so do you agree to that?

23 MS. GANNON: We have to see what they say. I
24 mean if the restrictive conditions were all potentially
25 eligible cultural resources on the project site need to be

1 completely avoided, that we know is not possible. So
2 that's why we can't say for certain that we can comply
3 with the most restrictive method. I mean we have through
4 the process avoided what we can, have been working very
5 closely with the BLM and others to try to identify the
6 appropriate mitigation.

7 So it's hard to respond to that in an affirmative
8 manner with the caveat that it's the most restrictive.

9 MR. GALLAGHER: I think we -- what we try to do
10 is identify first from the get-go, before we filed the
11 AFC, is to avoid the most sensitive areas. As you're
12 aware, we cut down the project from 900 megawatts to 750
13 megawatts to avoid --

14 PRESIDING MEMBER BYRON: However, how many
15 sensitive areas do we still have, Mr. Gallagher?

16 MS. GALLAGHER: Well, there are some. And we
17 can't talk about any detail here because that's
18 confidential information.

19 PRESIDING MEMBER BYRON: Just the number. I
20 think it's like 300 and something, isn't it?

21 MS. GANNON: That's the total number. That's not
22 the recommended eligible number. It's much, much, much
23 smaller than that.

24 PRESIDING MEMBER BYRON: What, 40?

25 MS. GANNON: A couple dozen.

1 PRESIDING MEMBER BYRON: Okay.

2 MR. GALLAGHER: So we're doing avoidance to the
3 maximum extent practicable. And we are -- you know, we
4 have a -- well, we're working with the BLM on what the
5 additional mitigation might be. But I think the concern
6 is that if the staff were to ask for additional avoidance
7 than the BLM has requested or for mitigation that's
8 different from what BLM asked for, then we get into this
9 position to where we can't necessarily do what BLM --
10 other than what BLM is telling us to do. That's the place
11 we'd like to avoid.

12 HEARING OFFICER RENAUD: I think we understand
13 that. But, again, these are really the kind of issues
14 that we can't address in specifics until we see the staff
15 analysis. And then at the evidentiary hearing these kinds
16 of things can be adjudicated. So I mean that's -- we
17 understand your concerns and we understand that there may
18 be some conflicts that are going to have to be resolved.
19 But we can't do that in advance. There's just no way to
20 do it.

21 MR. GALLAGHER: And this is -- again, this is why
22 Bob and I keep coming back to the concept that the staff
23 can lawfully and create a defensible document that relies
24 on BLM's work in this area. That's something that you can
25 do, and that we hope that staff will do to the maximum

1 extent.

2 PRESIDING MEMBER BYRON: And so if I may, let me
3 ask staff if you can respond. If I understood correctly -
4 and please correct me if I didn't get this right - the
5 applicant asserts that the staff has sufficient
6 information on cultural resources from the BLM and that
7 the Programmatic Agreement is what you should be relying
8 upon; is that correct?

9 MR. THERKELSEN: And the FEIS.

10 MS. GANNON: And we specifically recommended in
11 the conditions that they --

12 PRESIDING MEMBER BYRON: But the FEIS is not out
13 yet.

14 MR. THERKELSEN: But the administrative draft is
15 being circulated. And we had been assured, had been
16 assured several times by BLM that they will be sharing it
17 with the CEC, and had fully expected that to be the case.

18 PRESIDING MEMBER BYRON: Okay. I know, Ms.
19 Gannon, you want to add something. But I'm looking for
20 staff response to these things.

21 STAFF COUNSEL HOLMES: Well, staff has not seen
22 the administrative draft. And as CURE accurately pointed
23 out, we had planned to rely on the Programmatic Agreement
24 with the understanding that it would contain performance
25 standards, mitigation measures, the kinds of things that

1 are required under CEQA, and it did not. And we were not
2 comfortable sitting and waiting for an administrative
3 draft to see if it was going to be sufficient and run the
4 risk of it not being sufficient and trying to work things
5 out with BLM at the last minute, and we decided to
6 proceed. We thought that we could proceed and produce an
7 analysis that would allow the Commission to meet a
8 September decision date. We thought that was the safest
9 measure and we thought that was the best way that we could
10 ensure that the Commission's CEQA obligations were
11 complied with.

12 PRESIDING MEMBER BYRON: Yeah, that's how I
13 understand your effort. Correct me if I'm wrong, but that
14 you're trying to keep this schedule moving forward without
15 the availability of documents.

16 STAFF COUNSEL HOLMES: That's correct. We saw
17 potentially a greater risk of schedule delay by taking the
18 approach that the applicant has suggested, should the
19 federal documents not meet CEQA requirements.

20 PRESIDING MEMBER BYRON: Yeah, and that's how I
21 took it. And I was confused -- actually I was concerned
22 when the applicant came back here in the hearing that
23 we're conducting today indicating that you should not be
24 heading down that path, that it may delay schedule.
25 That's kind of disconcerting to me.

1 But go ahead, Mr. Meyer. I'm looking for some
2 dialogue on this subject because I'm trying to gather
3 information.

4 CEC PROJECT MANAGER MEYER: Yeah. As the
5 applicant pointed out numerous times that they're having
6 lots of discussions with the BLM. Because of our process,
7 we're not involved in those, because there would be a lot
8 of unnoticed meetings or negotiation of mitigation that we
9 cannot have outside the public forum.

10 So what we basically would be seeing is the
11 result of all of those negotiations without actually any
12 insight into the decision-making process that got us to
13 that point. And without knowing how extensively that's
14 going to be reflected in the BLM's document of all the
15 iterations, decisions, the negotiations, it makes it a
16 little harder for us to, as Caryn said, plan on that being
17 our process.

18 So we think that we're doing the best. If that
19 turns out to be a beautiful, complete document that fully
20 addresses CEQA concerns, I will go to our Environmental
21 Office and, you know, ask them, even if not to adopt it as
22 their own, to at least use as much of it as possible to
23 cut more time off of the production of our document and
24 also to -- if the mitigation is sufficient, to adopt that
25 as well.

1 But the one concern was which -- we were looking
2 at the Programmatic Agreement to have potentially a
3 fieldwork component where there would be additional
4 investigations that would help you narrow down, you know,
5 the 300 sites -- or 339, whatever it was, down to the
6 smaller number that -- you know, I'm not aware of what
7 that is yet. Then we'd have sort of a scientific or an
8 analytical background for going from this large number to
9 the smaller ones, that are significant, and then a plan to
10 deal with that smaller number.

11 Right now I have a large number. There was a
12 plan to deal with that. And if -- and staff just needs to
13 be very comfortable in how we get there.

14 PRESIDING MEMBER BYRON: I'm going to make sure
15 everybody has a chance to comment on this. So I'm not
16 trying to restrict comment at all. But the dialogue is
17 helpful.

18 A quick question for staff. Why don't you have
19 the administrative draft of the FEIS at this point? Is
20 not available? Is it being restricted?

21 CEC PROJECT MANAGER MEYER: I have to find out if
22 that's part of the 10-CRD-1 issue. I know that in one of
23 the other --

24 PRESIDING MEMBER BYRON: Just for -- so we're not
25 speaking in code, what's 10-CRD-1?

1 CEC PROJECT MANAGER MEYER: I'm sorry. There was
2 a separate proceeding that was open to address the fact
3 that the BLM has asked for all of the cultural information
4 back.

5 PRESIDING MEMBER BYRON: Right.

6 CEC PROJECT MANAGER MEYER: And to this point,
7 all the new cultural information on any of the projects
8 that I'm aware of has not been shared with staff. Or in
9 some cases staff may have gotten a severely redacted
10 version of the information that may or may not be useful
11 in their analysis.

12 HEARING OFFICER RENAUD: Would it be useful for
13 you to have the administrative draft?

14 CEC PROJECT MANAGER MEYER: Yes. And my
15 understanding from talking to the BLM -- my BLM
16 counterpart is that we were going to get that. But there
17 was still a question at that time of whether we would be
18 getting that -- getting the cultural resource section of
19 that.

20 So this is first I heard that we were going to
21 get the cultural resource section of that administrative
22 draft, which would be very helpful.

23 MS. GANNON: For clarity though, the
24 administrative draft or the FEIS, none of that is
25 protected.

1 CEC PROJECT MANAGER MEYER: Yes, that's true.

2 MS. GANNON: This is exactly what's going to be
3 publicly released. So there's no redacted information in
4 any version that you get. That will be the full analysis.
5 It wouldn't be -- and that's different in the cultural
6 resource --

7 CEC PROJECT MANAGER MEYER: Right. It was not an
8 issue of confidentiality. It was an issue of the draft
9 document.

10 STAFF COUNSEL HOLMES: It's an issue of the
11 confidentiality of the draft rather than an issue of the
12 confidentiality of the cultural resources information.

13 MS. GANNON: Right. But since they were
14 distinguishing, yeah, a cultural resource from other
15 sections, they're not being treated any differently.

16 CEC PROJECT MANAGER MEYER: Right. It was just
17 that BLM had expressed a greater deal of concern on
18 whether it was confidential or not, but just the release
19 of the draft information on cultural.

20 So I will work with my counterpart to address
21 getting that information to staff as quickly as possible.

22 HEARING OFFICER RENAUD: So that's not a public
23 document then, the administrative draft?

24 MS. GANNON: It's currently within the federal
25 agencies. At the last Renew Energy Agency team we were

1 told that -- or was meeting with the BLM. They said they
2 were willing to share it with the staff, that they thought
3 that would be helpful. We know that it has gone to the
4 other federal agencies for their comments. It's going
5 through their internal process --

6 HEARING OFFICER RENAUD: Okay.

7 MS. GANNON: -- and then will be released. But
8 until it's released, it's an agency --

9 CEC PROJECT MANAGER MEYER: Yeah. Yeah,
10 generally the admin draft is just -- it's sort of like
11 when we have a draft of our final Staff Assessment, that
12 just goes around the building internally for comment.
13 That's the stage it's at.

14 PRESIDING MEMBER BYRON: Ms. Gannon, I cut you
15 off earlier. Is there something else you wanted to add?

16 MS. GANNON: There is. A couple of things.

17 One is, with regard to why not relying on the PA
18 has created this new need for a completely different
19 approach to the analysis. I don't -- I guess I'm somewhat
20 at a loss as to why one equates with the other. Because
21 as was in the draft EIS Staff Assessment, there was a
22 description of the resources, there was a description of
23 the potential impacts, then there was a discussion of some
24 of the mitigation. I understand why not relying on the PA
25 would change what the mitigation approach is. But I don't

1 understand why it totally changes the analysis. And when
2 we -- we had been saying that the staff has everything
3 that they need. This was saying that they had the factual
4 basis to be able to make these determinations.

5 You know, Christopher just alluded to the fact
6 that the PA was supposed to be describing additional
7 fieldwork that needed to be done. That fieldwork has all
8 been done. All of that information has been given to the
9 BLM. And when the -- and it was shared with the CEC staff
10 as well. And then we all know that there was the issues
11 about whether that had to be returned to the BLM or not.

12 MR. GALLAGHER: But that was the information that
13 was shared in December.

14 MS. GANNON: It was shared in December. So that
15 there could be what was called a Class 3 report, which is
16 the hundred percent fieldwork which is all of the
17 recommendations about how these resources should be
18 analyzed and which ones should be considered eligible.
19 All of that was shared with staff in December. So that
20 information has been there and has been available for
21 quite some time.

22 So that limits this large number of 300 down to
23 this couple of a dozen that we're describing.

24 So, again, I just -- I think what we are
25 frustrated by is just the fact that at this point that

1 analysis is not further along. And, again, I understand
2 why. We still believe that the PA is the appropriate way
3 to go. But I can understand why saying you're not going
4 to rely on the PA would make you have some work to do to
5 identify your mitigation measures, but not to do the
6 whole analysis.

7 MR. GALLAGHER: And as far as --

8 PRESIDING MEMBER BYRON: I'm sorry. Repeat that
9 again.

10 MS. GANNON: I can understand why they would --
11 if the staff decided that they were not going to rely on
12 the Programmatic Agreement for mitigation, they would have
13 to be coming up with their own mitigation measures, which
14 would take some time. But I don't think it would take two
15 months. If you had the analysis of the impacts and
16 analysis of the resources which has been available, I
17 don't know why mitigation would take that long to be able
18 to come up with meaningful measures.

19 So, again, the PA is just -- I don't understand
20 why that's changed -- not doing the PA has changed the
21 whole substantive considerations.

22 PRESIDING MEMBER BYRON: What about the fact that
23 the PA continues to seem to take longer to be produced?
24 My recollection from the evidentiary hearing we conducted
25 last month, it was going to be available mid-June. And

1 here now I think -- let me just look for a second, see if
2 I can find it on here.

3 MS. GANNON: Because the date here is not right.

4 PRESIDING MEMBER BYRON: What number should I be
5 looking at?

6 MR. THERKELSEN: Line number 19.

7 PRESIDING MEMBER BYRON: Number 19 shows 6/21.
8 And now I understand it's in to June, correct? July.

9 MS. GANNON: Because we are now going to draft
10 three of it. So I mean I think when they first talking
11 about the first draft and the second draft, there has
12 been -- it's an iterative process, it's a consultation
13 process.

14 PRESIDING MEMBER BYRON: Understood.

15 And so my question is, are we satisfied it's
16 going to be available in July?

17 MS. GANNON: It is going to be part of the FEIS.
18 And that is being released on July 16th. So it does have
19 this -- it has this deadline.

20 PRESIDING MEMBER BYRON: Staff, Mr. Meyer or Ms.
21 Holmes, would either of you care to respond to some of the
22 things that we just heard from Ms. Gannon?

23 CEC PROJECT MANAGER MEYER: I'm trying to think
24 of the appropriate way to start here.

25 PRESIDING MEMBER BYRON: Let me start. My sense

1 is that you've made every effort to try and keep this on
2 schedule. Are you concerned as well that the Programmatic
3 Agreement's not going to be available at any time or
4 manner or not have sufficient information for a CEQA
5 defensible analysis?

6 CEC PROJECT MANAGER MEYER: One of the reasons
7 that staff had issue with continued reliance on the
8 Programmatic Agreement is there were certain
9 recommendations -- and as the applicant pointed out, this
10 is a -- it's a collaborative process. This is not a staff
11 document. This is something where staff can make comments
12 and suggestions. But ultimately it's beyond staff's
13 control as to whether those get into the document.

14 There are many things that staff asked for, the
15 specificity in mitigation, that did not make it into the
16 draft document, and staff has little hope will be in the
17 final document. The absence of that information is the
18 chief concern that staff has over this, it being a
19 CEQA-compliant document or, you know, process, without
20 that specificity, sort of as -- Bob talked about before
21 and Caryn mentioned that we are looking for sort of
22 performance standards, other -- you know, sort of a
23 mitigation plan or, you know, for lack of a better -- you
24 know, best management practices for cultural resources.

25 When we saw that was not likely to be in the

1 final document or if we weren't sure if it was going to be
2 in the final document, that's when we pulled back.

3 And going back quite awhile, I sort of lost count
4 at how many drafts have gone out on the cultural resource
5 report. But I think the first one was 5,000, it went to
6 7, then went to 12,000.

7 And so there have been several iterations of the
8 cultural resource report. Each one fixing, you know,
9 either inconsistency or missing information. Or as one of
10 the earlier documents that came out from the BLM is they
11 did an audit of the report and had some concerns that the
12 applicant has subsequently addressed and is -- I believe
13 is addressed. And that was one of the things that was
14 going to be addressed in the Programmatic Agreement as
15 well was just truing up and closing any outstanding loops
16 from the report that LSA did awhile back on some of the
17 information in the initial cultural resource information.

18 So just because the record has concerns that
19 we're raised on the cultural resource report, and also
20 subsequently of how staff planned to handle it, we're
21 trying to address all of those issues, which to do it well
22 does take time.

23 But as I've said previously, I've brought in, you
24 know, up to the deputy director to go over and help me
25 talk to staff and the Environmental Office managers to

1 really express the need to get this out as fast as
2 possible. And just because we agree to an August 2nd
3 date, if they can get any sooner, they understand that
4 they need to.

5 HEARING OFFICER RENAUD: All right. Thank you.
6 That's helpful and somewhat reassuring. Appreciate that.

7 MS. GANNON: Can we ask for one clarification
8 from staff?

9 HEARING OFFICER RENAUD: Please.

10 MS. GANNON: Just to make sure again so we don't
11 have some big surprise.

12 Staff is not suggesting that additional fieldwork
13 is needed for cultural resources investigation, are you?

14 STAFF COUNSEL HOLMES: Between now and the Staff
15 Assessment, no.

16 MS. GANNON: Or ever. I mean and we've done a
17 hundred percent surveys which have been, you know,
18 accepted by the BLM. I mean this would be a really --

19 CEC PROJECT MANAGER MEYER: Well, let me preface
20 it.

21 There's a difference between surveys. You know,
22 speaking as an archeologist, you know, generally on a
23 large scale project you'll have three phases. Survey,
24 that's your first phase. Second you do your analysis,
25 you'll do evaluations, and then -- and that's going to be

1 subsurface. That's going to be excavation work where
2 you're going to take -- and that's really, you know,
3 generally accepted that's the only way to be certain that
4 these 300 sites or the ones that you go out and you do
5 excavations, shovel test units, scrapes, whatever it is,
6 which are different depending on the environment and the
7 type of site you have. You go from that to an
8 understanding that, you know, a great number of the sites
9 may not be culturally significant or may not add
10 additional information into the record. You have to also
11 take into account traditional cultural properties, other
12 issues that go into that significance.

13 And then your final phase, you know, your Phase
14 3, is when you have a significant site that is
15 unavoidable, and you'll go and you'll do daily recovery.
16 And that the mitigation is basically taking a small
17 percentage, five percent or 10 percent, of the site and
18 taking that information, curating it, doing the reports.
19 And that offsets the loss of that cultural resource.

20 And avoidance is also -- is the preferred
21 alternative on that.

22 So I'm not taking the necessity for doing
23 fieldwork on sites that are unavoidable off the table.

24 MS. GANNON: Okay. No, no. Right. That's fine.
25 I just -- and there are recommendations in our report,

1 which obviously we can't go into detail, but for areas
2 where there was additional excavation that was needed to
3 be able to do the criteria evaluation. And that's fine.

4 CEC PROJECT MANAGER MEYER: Right. And that's
5 all I'm talking about is like either if a site can't be
6 avoided, there might be fieldwork; or if there are sites
7 where we know that there's a site there, we're not sure
8 what it's significance, there might be additional work
9 necessary. That's all we're talking about.

10 MS. GANNON: Favored approached, that's -- you
11 just gave us a heart attack for a moment, so thank you for
12 the clarification.

13 HEARING OFFICER RENAUD: All right. Thank you,
14 everyone.

15 I think we've gotten a good input from all of
16 you. And before we proceed to adjournment, let me ask,
17 anything further from intervenor Cure?

18 MS. MILES: I just wanted to add a quick
19 follow-up on this conversation. And in particular I know
20 the applicant was referring to the December report that
21 staff has had since December, which was a draft report.
22 And I know the BLM concern about releasing draft reports
23 is that there may be inaccuracies in them.

24 And something that was brought up during that
25 separate hearing regarding -- evidentiary hearing

1 regarding those draft reports and whether they should be
2 released was that BLM's Dr. Charlotte Hunter said that the
3 draft report is -- hands them out to inaccurate
4 information, because they go back and they do a lot of
5 analysis after the draft report.

6 So I would encourage staff to look to the final
7 report, you know, before concluding analysis. And what we
8 were told at the meeting last week with the BLM was that
9 the final report should be out this week, and that it
10 should also be shared with other consulting parties who
11 have not yet had a chance to see it including the tribal
12 members that would be identifying a lot of the resources
13 that are traditional cultural properties.

14 So that's a key part of this puzzle that needs to
15 be taken into account.

16 HEARING OFFICER RENAUD: Thank you.

17 Intervenor California Native Plants Society, if
18 you joined us, do you wish to say anything?

19 No.

20 Mr. Budlong, anything to add?

21 MR. BUDLONG: No comment.

22 HEARING OFFICER RENAUD: Thank you.

23 Alimamaghani?

24 Nothing.

25 All right. I think we've accomplished what we

1 came here to do.

2 Any final remarks, Commissioner?

3 PRESIDING MEMBER BYRON: Thank you, Mr. Renaud.

4 Wow, great start to the first day of summer, you
5 all.

6 (Laughter.)

7 PRESIDING MEMBER BYRON: You know, the Committee
8 plans to issue a scheduling order. That was the purpose
9 of this scheduling status conference, was to see if we can
10 get the sufficient information. And Mr. Renaud, I'm sure,
11 is going to do his best to coordinate schedules, based
12 upon those of our intervenors, the applicant, staff, all
13 the parties, for evidentiary hearings and briefing dates,
14 et cetera. And also when we can realistically expect
15 input and documents from the BLM.

16 It's certainly the goal of this Committee to
17 provide a complete and defensible PMPD in a timely manner.
18 And I have to mention that I want to make sure there's
19 sufficient time for everyone's review. We're always
20 concerned about that. There was not a great deal of
21 discussion about that in this hearing today -- I'm
22 sorry -- the status conference today.

23 But there is a lot on the line. These
24 projects -- these ARRA-funded projects are extremely
25 important to the State of California, and so we're going

1 to continue to push hard on schedule. But I want to make
2 sure everyone understands we are not going to compromise
3 the public process along the way.

4 I'm not terribly satisfied this project is on
5 schedule. We've got a lot of late changes that have come
6 in in recent months from the applicant. Those were not
7 necessarily discussed today. I know there's a great deal
8 of analysis that's underway.

9 And I appreciate the input that we received from
10 the applicant with regard to a draft schedule - that's
11 very helpful - all the comments that were received today.
12 And I know the staff is working diligently to try and meet
13 the ultimate deadline of the schedule.

14 But I want to make sure that we do have
15 sufficient review time on the part of all the parties that
16 are involved in this case.

17 Mr. Renaud, I think you have your work cut out
18 trying to figure that schedule out in a timely manner so
19 that we can issue it.

20 I would like to thank everyone for being here
21 today and for those of you on the phone. The Information
22 we gathered today was very helpful, and I think we will be
23 able to put out an order.

24 Do you agree, Mr. Renaud?

25 HEARING OFFICER RENAUD: I do. I do. We can

1 expect that very shortly.

2 PRESIDING MEMBER BYRON: So no further comments.

3 We'll be adjourned.

4 Thank you.

5 HEARING OFFICER RENAUD: Thank you.

6 (Thereupon the hearing adjourned at 11:27 a.m.)

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CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Energy Commission hearing was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California;

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of June, 2010.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063